FH

# STATE OF WISCONSIN
## Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

HMO/166963

**PRELIMINARY RECITALS**

Pursuant to a petition filed June 27, 2015, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on August 11, 2015, at Milwaukee, Wisconsin.

NOTE: The record was held open until August 25, 2015 to give the parties an opportunity to provide additional documentation. Ms. Miller submitted a fax that contained a denial letter dated September 25, 2014; and a print out of Petitioner's x-rays. It has been marked as Exhibit 3 and entered into the record. Petitioner's mother submitted Petitioner's dental records. They have been marked as Exhibit 4 and entered into the record.

The issue for determination is whether [redacted] correctly denied the Petitioner's request for prior authorization of orthodontic work.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Lucy Miller, RN Consultant
Division of Health Care Access and Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner is a 12 year-old resident of Milwaukee County. (Exhibits 2 and 3)
2. On September 25, 2014, [redacted] sent the Petitioner a notice advising her that her request for orthodontic treatment was denied. The notice did not contain any information about Petitioner's appeal rights. (Exhibit 2, attachment 3)
3. Petitioner's mother, on behalf of the Petitioner, filed an appeal that was received by the Division of Hearings and Appeals on June 27, 2015. (Exhibit 1)
4. The dental consultant for the Department of Health Services (DHS) determined the Petitioner to have a Salzmann Index Score of 26. (Exhibit 2, attachment 4)
5. Petitioner's x-rays show substantial crowding / overlap of her teeth and she is noted to have a cross-bite. (Exhibit 4)
6. Petitioner has swelling; she also has throbbing pain that comes and goes and that she rates as a 5 on a ten point scale. (Exhibit 4)
7. The pain occurs every day and worse in the morning. Petitioner wakes up with swelling in her cheek and she takes Tylenol and ibuprofen every day to control the pain. (Testimony of Petitioner's mother)

## DISCUSSION

Under the discretion allowed by *Wis. Stat., §49.45(9)*, the Department of Health Services (DHS) requires MA (Medical Assistance) recipients to participate in HMOs. *Wis. Admin. Code, §DHS 104.05(2)(a).* MA recipients enrolled in HMOs must receive medical services from the HMOs' providers, except for referrals or emergencies. *Wis. Admin. Code, §DHS 104.05(3).*

The criteria for approval by a managed care program contracted with the DHS are the same as the general MA criteria. See *Wis. Admin. Code, §DHS 104.05(3)* which states that HMO enrollees shall obtain services "paid for by MA" from the HMO's providers. The department must contract with the HMO concerning the specifics of the plan and coverage. *Wis. Admin. Code, § DHS 104.05(1)*.

If the enrollee disagrees with any aspect of service delivery provided or arranged by the HMO, the recipient may file a grievance with DHS or appeal to the Division of Hearings and Appeals.

Just as with regular MA, when the department denies a grievance from an HMO recipient, the recipient can appeal the DHS's denial within 45 days. *Wis. Stat., §49.45(5), Wis. Admin. Code, § DHS 104.01(5)(a)3.*

In the case at hand, it is unclear whether Petitioner filed a grievance with the HMO. However, the notice of denial that was sent to Petitioner did not contain any information about her appeal rights. As such, it is found that Petitioner's appeal is timely. I will note for the record that neither the HMO, nor DHS contested the timeliness of Petitioner appeal.

When determining whether to approve any service, the HMO, as with the Division of Health Care Access and Accountability (DHCAA), must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, §DHS §107.02(3)(e)*:

> (e) *Departmental review criteria.* In determining whether to approve or disapprove a request for prior authorization, the department shall consider:
>
> 1. The medical necessity of the service;
> 2. The appropriateness of the service;
> 3. The cost of the service;

4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

(a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
(b) Meets the following standards:
1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
3. Is appropriate with regard to generally accepted standards of medical practice;
4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

*Wis. Admin. Code, §DHS 101.03(96m)*

For any prior authorization request to be approved, the Medicaid recipient must show that the requested service satisfies the generic prior authorization criteria listed above. At their core, those criteria include the requirement that the service be medically necessary. *Id.*

The Division of Health Care Access and Accountability finds orthodontics to be medically necessary when:

1. There is a severe and handicapping malocclusion as determined by a minimum Salzmann Index Score of 30 or greater. See *MA Provider Handbook*, p. B5.2-070; see also *ForwardHealth's on-line provider handbook, topic #2909.* The Salzmann Index measures the misalignment of teeth.
2. There are extenuating circumstances where, even though the Salzmann Index Score is under 30, there is a severe handicapping malocclusion, i.e. the malocclusion prevents the person from eating or causes severe pain.
3. The request is for minor treatment (1-4 teeth) for limited or interceptive orthodontic treatment using fixed or removable appliances, i.e. using spacers in a younger child to prevent a malocclusion.

4. The request is the result of a personality or psychological condition and a referral is made by a mental health professional.

*ForwardHealth's on-line provider handbook, topic #2909.*

"Orthodontic treatment is *not* authorized for cosmetic reasons." Id.

In the case at hand, DHS determined the Petitioner's Salzmann Index score to be 26. It is not clear from the record how the DHS consultant came to this conclusion. None the less, even if Petitioner's Salzmann Index score is, in fact, 26, she meets approval criteria under paragraph 2, because there are extenuating circumstances. Petitioner's mother testified credibly that the Petitioner suffers pain and swelling every day, and needs to take Tylenol and ibuprofen every day to manage that pain. The dental records in Exhibit 4 substantiate this testimony. Indeed, looking at Petitioner's x-rays it would not be surprising if Petitioner was experiencing mouth pain.

Based upon the foregoing, it is found that Petitioner meets approval criteria for orthodontics.

**The petitioner's orthodontist will not receive a copy of this decision. The petitioner must provide her orthodontist with a copy of this decision or s/he will not be able to perform the work. Petitioner's orthodontist will have to prepare a new prior authorization form.**

## CONCLUSIONS OF LAW

[redacted] incorrectly denied the Petitioner's request for orthodontic work.

**THEREFORE, it is ORDERED**

That petitioner's orthodontic provider, [redacted], Inc., is hereby authorized to receive reimbursement for the orthodontic work that is the subject of this decision and to submit its claim, along with a copy of this decision and a new prior authorization form to Petitioner's HMO / insurer for payment.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in

this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee, Wisconsin, this 27th day of August, 2015.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals

**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on August 27, 2015.

Division of Health Care Access and Accountability